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Review of the inputs to the substantive preparatory process and the International Conference on Financing for Development

Technical notes

Note by the Secretary-General

Addendum

Technical note No. 7:* Existing proposals on bilateral and multilateral investment agreements and practices as regards codes of conduct for transnational corporations and Governments with respect to foreign direct investment

I. Introduction

1. International rule-making on or directly relating to investment issues is multifaceted and spans the bilateral, regional, interregional and multilateral levels. It can take the form of binding or voluntary instruments creating different degrees of obligations.[1]

2. **Bilateral** investment treaty making has been particularly active over the past decade.[2] Bilateral investment treaties (BITs) are designed to promote, protect and facilitate foreign investment. Since the adoption of the first BIT in 1959, the number of such treaties had grown steadily to 385 by the end of 1989 and jumped to 1,941 by the end of 2000. Parallel to BITs, countries are also increasingly concluding agreements for the avoidance of double taxation, the number of which had reached 2,118 by the end of 2000. They address, among other things, the allocation of taxable income, inter alia, with a view to reducing incidents of double taxation. In recent years, bilateral trade agreements have also increasingly addressed

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investment issues (for example, agreements between Australia and New Zealand, Japan and Singapore, Canada and Chile, and Mexico with Chile, Costa Rica and Nicaragua respectively), as have the association agreements of the European Community.

3. BITs constitute to date the most widely used instrument for the international protection of foreign direct investment (FDI). Their main provisions typically deal with the scope and definition of foreign investment (which in most cases includes tangible and intangible assets, direct as well as portfolio investments, and existing as well as new investments); entry of investments; national and most-favoured-nation treatment; fair and equitable treatment; guarantees and compensation in respect of expropriation and compensation for war and civil disturbances; guarantees of free transfer of funds and repatriation of capital and profits; subrogation on insurance claims; and dispute settlement provisions, both State-to-State and investor-to-State. In addition, some BITs include provisions regarding transparency of national laws; performance requirements; entry and sojourn of foreign personnel; general exceptions; and extension of national and most-favoured-nation-treatment to the entry and establishment of investments. The exact content of BIT provisions, however, varies considerably, even between BITs signed by the same country.[3] BITs have traditionally been negotiated between developing countries seeking to attract international investment and developed countries as the principal homes to foreign investors. Developing countries, as hosts to FDI, concluded BITs in order to create a favourable climate and in some cases to become eligible to participate in political risk insurance programmes organized by capital-exporting countries. The BIT network grew rapidly in the 1990s, as more developing countries and economies in transition signed treaties with a wider range of developed countries and started to sign BITs between themselves.

4. At the **regional** level, only a few instruments are entirely devoted to investment. Particularly well known are the Framework Agreement on the Association of Southeast Asian Nations (ASEAN) Investment Area and the Andean Community's Decision 291. In addition, regional trade agreements have included in recent years investment-related provisions of various kinds. The North American Free Trade Agreement (NAFTA), the Southern Cone Common Market (MERCOSUR) Protocols and the Common Market for Eastern and Southern Africa (COMESA) Treaty are examples. The general aim of these agreements is to create a more favourable investment climate, with a view to increasing the flow of investment within or between regions.

5. At the **interregional** level, the Organisation for Economic Cooperation and Development (OECD) Declaration on International Investment and Multinational Enterprises is perhaps the best-known example. It sets forth non-binding principles and standards addressed to both Governments and enterprises in a framework designed to create a favourable climate for international investment and maximize the positive contribution that transnational corporations (TNCs) can make to economic, social and environmental progress. The OECD Guidelines for Multinational Enterprises, which form an integral part of the Declaration, make recommendations to enterprises on a wide range of business activities, including employment and industrial relations, environment, consumer interests, combating bribery, information disclosure, science and technology, competition and taxation. Their aim is to help TNCs operate in harmony with government policies and with societal expectations wherever they operate. Revised and updated in June 2000, in consultation with business, labour and representatives of other non-governmental bodies, the OECD Guidelines are supported by implementation procedures in the participating countries. The other parts of the Declaration contain commitments by adhering Governments to provide national treatment to established foreign affiliates, to avoid imposing conflicting requirements on enterprises and to cooperate regarding investment incentives and disincentives. All 30 OECD member countries and 3 non-OECD countries (Argentina, Brazil and Chile) adhere to the Declaration. OECD encourages other countries to join the Declaration, and seven countries (Estonia, Latvia, Lithuania, Israel, Singapore, Slovenia and Venezuela) are engaged in adherence proceedings.

6. The OECD Code of Liberalisation of Capital Movements and Code of Liberalisation of Current Invisible Operations constitute legally binding rules, stipulating progressive, non-discriminatory liberalization of capital movements, the right of establishment and current invisible transactions (mostly services). All non-conforming measures must

be listed in country reservations against the Codes. The Codes are implemented through policy reviews and country examinations, relying on "peer pressure" to encourage unilateral rather than negotiated liberalization. The Codes were initially adopted in 1961 but have since been revised and expanded in scope. Important recent additions were the right of establishment (1986) and cross-border financial services (1992). For most member countries, remaining reservations against the obligations set out in the Codes relate to FDI, the purchase of real estate by non-residents and the prohibitions of certain types of securities operations.

7. From 1995 until 1998, negotiations on a Multilateral Agreement on Investment (MAI) took place at OECD. Negotiating countries consisted of all OECD members plus eight other economies from South America, Europe and Asia. The negotiations were unsuccessful.

8. The Energy Charter Treaty and the Asia-Pacific Economic Cooperation (APEC) Non-Binding Investment Principles are other important instruments spanning more than one region.

9. At the **multilateral** level, a number of rules bear on international investment, some binding, others not. The World Trade Organization Agreement on Trade-related Investment Measures (TRIMs),[4] which entered into force on 1 January 1995, prohibits any TRIM that is inconsistent with the provisions of article III or article XI of the General Agreement on Tariffs and Trade (GATT) 1994. The World Trade Organization General Agreement on Trade in Services (GATS) sets out general principles, obligations, commitments and exemptions governing international trade in services. The World Trade Organization Agreement on Subsidies and Countervailing Measures provides a comprehensive framework of disciplines in this area.

10. The Multilateral Investment Guarantee Agency (MIGA) offers insurance against political risks to foreign investors, and the International Centre for Settlement of Investment Disputes (ICSID) offers a forum for the settlement of investment disputes. Over the past decade, MIGA has provided over $8 billion in guarantees covering investments in nearly 80 countries and facilitating investments in excess of $40 billion. ICSID has registered a total of 85 arbitration cases, of which 42 were brought to ICSID under bilateral and multilateral investment protection treaties. The World Bank Guidelines on the Treatment of Foreign Direct Investment, submitted to the Development Committee for its consideration in September 1992, are a non-binding instrument.

11. The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy addresses issues related to employment, training, conditions of work and life, and industrial relations, and also includes a procedure for the examination of disputes concerning the application of this agreement by means of interpretation of its provisions. Of relevance also are the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (A/C.2/35/6, annex), which provide non-binding principles and rules for the adoption, improvement and enforcement of appropriate legislation and procedures for the control of restrictive business practices by domestic firms as well as TNCs. Efforts during the 1980s to adopt a United Nations code of conduct on transnational corporations were unsuccessful.

12. The 1999 Global Compact of the United Nations Secretary-General takes a different approach. It is not a regulatory instrument or code of conduct, but a value-based platform designed to promote institutional learning. It provides a framework for better interaction between TNCs and host countries, utilizing transparency and dialogue to identify and disseminate good practices based on universal principles. The Compact encompasses nine such principles, drawn from the Universal Declaration of Human Rights,[5] the ILO's Declaration on Fundamental Principles and Rights at Work and the principles contained in the Rio Declaration on Environment and Development.[6] The Compact asks companies to act on these principles in their own corporate domains. The Compact also supports efforts to enhance the contribution of FDI to development.

II. Proposals

13. It is virtually impossible to establish a comprehensive listing of proposed bilateral instruments containing investment-related provisions; in particular, a large number of BITs and double taxation agreements are negotiated every year. At the regional and multilateral levels a number of initiatives are announced, and are under discussion or negotiation;

some details are provided below on a selected number of them. There are also a number of proposals by groups of civil society as regards international investment instruments.[7]

Free Trade Area of the Americas

14. The Free Trade Area of the Americas (FTAA) process was initiated at the First Summit of the Americas held in Miami in December of 1994.[8] From September 1995 to March 1998, a total of 12 working groups, including a Working Group on Investment, met on a regular basis to prepare the negotiations, which were launched at the Second Summit held in Santiago, Chile, in April 1998. At their Third Summit held in Quebec City from 20 to 22 April 2001, the leaders of FTAA participating countries (in the Declaration of Quebec City, 22 April 2001), directed their ministers responsible for trade "to ensure that negotiations of the FTAA Agreement are concluded no later than January 2005 and to seek its entry into force as soon as possible thereafter, but in any case, no later than December 2005".

15. Countries are currently negotiating on a draft agreement dated 3 July 2001. As part of the draft FTAA Agreement, an Investment Chapter is being negotiated. The Negotiating Group on Investment is called upon to develop a framework incorporating comprehensive rights and obligations on investment, taking into consideration the substantive areas already identified by the earlier Working Group on Investment, as well as to develop a methodology to consider potential reservations and exceptions to the obligations. The Negotiating Group on Investment has completed two negotiating rounds and prepared a consolidated draft text of the Investment Chapter. Issues covered in this preliminary version of the Investment Chapter include scope, basic definitions, national treatment, most-favoured-nation treatment, fair and equitable treatment, performance requirements, key personnel, transfers, expropriation, compensation for losses, general exceptions and reservations, dispute settlement, transparency, and the commitments neither to relax domestic environmental laws nor to relax domestic labour laws to attract investment. At their sixth meeting held in Buenos Aires, on 7 April 2001, FTAA Ministers of Trade agreed to publish the first draft of the FTAA Agreement. They instructed the Negotiating Groups "to continue working under the general principle that any delegation has the right to present the text proposals it deems relevant for the effective progress of the process, which may eventually be placed in brackets (Ministerial Declaration, annex I, General Instructions, para. 1)". Ministers of Trade also recognized that "environment and labour should not be utilized as conditionalities nor subject to disciplines, the non-compliance of which can be subject to trade restrictions or sanctions (ibid.)". FTAA Ministers of Trade instructed the Negotiating Groups "to intensify efforts to resolve existing divergences and reach consensus, with a view to eliminating the brackets from draft texts, to the maximum extent possible" (Ministerial Declaration, para. 10) and to submit a new version of their respective chapter no later than eight weeks prior to the next Ministerial Meeting, to be held in Ecuador in October 2002. To comply with the second part of its mandate, namely, to develop a methodology to consider potential reservations and exceptions, the Negotiating Group on Investment was instructed "to submit ... its recommendations on modalities and procedures ... in order to initiate negotiations no later than 15 May 2002 (ibid., annex I, sect. C, para. 1)".

SAARC Regional Agreement on Investment Promotion and Protection

16. The South Asian Association for Regional Cooperation (SAARC) comprises Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. At the seventh meeting of the Committee on Economic Cooperation of SAARC, held in 1996, the Council of Ministers agreed to initiate specific steps to promote and protect investment and joint venture efforts. Pursuant to that decision, a meeting on Promotion and Protection of Investment had been held in New Delhi on 29 and 30 September 1997 during which modalities for increasing intraregional investment were considered and a draft "SAARC Regional Agreement on Investment Promotion and Protection" was circulated. At the eleventh meeting of the Committee, held in Dhaka, in February 1999, it was decided to convene a second meeting on Promotion and Protection of Investment in India to examine the draft investment agreement and consider the possibility of establishing a SAARC Arbitration Council. A Standing Group on Standards, Measurement and Quality Control has been constituted with a view towards upgrading national standards and evolving harmonized regional standards.

In addition, a Regional Agreement on the Avoidance of Double Taxation is being considered.

Southern African Development Community (SADC) Protocol on Finance and Investment

17. The Southern African Development Community (SADC) includes the following countries: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. The Protocol, drafted in March 1998, sets out the basic principles of investment policy. These include, among others, that the pace of privatization in the region should be increased and private-public partnerships encouraged; that foreign and domestic investors should have equal access; that simple, transparent and non-discriminatory procedures for the approval, entry and operation of investment needed to be established; and that investment promotion agencies should shift attention from incentives measures towards policy and administrative reform in order to attract investment.

Resolution of the European Parliament on European Union (EU) Standards for European Enterprises Operating in Developing Countries: Towards a European Code of Conduct

18. This resolution was adopted on 15 January 1999. In it, the European Parliament reiterated its request to the European Commission and the European Council "to make proposals, as a matter of urgency, to develop the right legal basis for establishing a European multilateral framework governing companies' operations worldwide and to organize for this purpose consultations with companies' representatives, the social partners and those groups in society that would be covered by the code" (para. 11).[9]

The proposal of the Group of Seven Finance Ministers to the Group of Eight Heads of State and Government

19. At the 2001 Genoa Summit, the Group of Seven (G-7) Finance Ministers made the following proposal:

"The implementation of investment-related best practices as well as the development of international principles, codes and standards can provide guidance for and underpin domestic reform efforts by developing countries. We call on the international financial institutions (IFIs) and other relevant multilateral bodies to intensify their effort to promote implementation of international codes and standards in the context of the policy dialogue with partner countries. We call on the World Bank, in cooperation with other relevant bodies, to step up its work to produce ROSC (Reports on the Observance of Standards and Codes) assessment modules of compliance with corporate governance and accounting standards. Progress in the implementation of standards must be visible in order to allow for the private sector actors to adjust their risk assessment and risk ratings. At the multilateral level, a stable and non-discriminatory investment regime could be brought about and maintained through the establishment of a high-standards framework of investment rules. We also encourage the continued discussion on investment in the World Trade Organization working group and urge the relevant international institutions, in particular the World Bank, OECD, the World Trade Organization and UNCTAD, to continue their cooperative efforts focusing on best practices with respect to the protection of property rights, investor protection, investment policies, competition-enhancing policies and transparent tax regimes."[10]

Review of the operation of the World Trade Organization Agreement on Trade-related Investment Measures (TRIMs)

20. The TRIMs Agreement provides in article 9 for a review of its operation by the Council for Trade in Goods no later than five years after the date of entry into force of the Agreement Establishing the World Trade Organization. Article 9 envisages that in the context of that review consideration shall be given to whether the Agreement should be complemented with provisions on investment policy and competition policy. The Council had initiated this review in October 1999, in connection with which it recently decided to

request the secretariats of the World Trade Organization and UNCTAD to prepare a study of the use of TRIMs and other performance requirements and their effects on trade and development. In the context of the preparatory process for the World Trade Organization Third Ministerial Conference held in Seattle, proposals were made in 1999 regarding possible changes to the TRIMs Agreement. Some of these proposals would have expanded the scope of the Agreement while others would have provided for exemptions for developing countries and for a general extension of the period within which developing countries were required to eliminate TRIMs of which they had notified to the Council. In July 2001, the Council for Trade in Goods adopted decisions under article 5.3 of the TRIMs Agreement that extended the transition period until 31 December 2001 and provided for the possibility of a further extension of that period until 31 December 2003. These decisions apply to Argentina, Colombia, Malaysia, Mexico, Pakistan, the Philippines and Romania. At the same time, the General Council adopted a waiver under article 9 of the World Trade Organization Agreement that accorded a similar extension of the transition period to Thailand.

The General Agreement on Trade in Services (GATS): built-in agenda

21. As part of the built-in agenda of the Uruguay Round of multilateral trade negotiations agreements, negotiations on services have resumed. The first stage of negotiations on services was completed at a stocktaking at the March 2001 meeting of the Council for Trade in Services, which resulted in the adoption of the "Guidelines and Procedures for the Negotiations on Trade in Services" (S/L/93). These guidelines emphasize development aspects as part of the objectives and principles for negotiations. The "request and offer" approach in the negotiations remains the main method, but other approaches may also be utilized. More than 80 proposals have been submitted to the Special Session of the Council, the majority of them by developed countries. The review of these proposals is at the core of the services negotiations leading into the World Trade Organization Ministerial Conference in Doha.

Further discussions on international investment matters in the World Trade Organization

22. The 1996 World Trade Organization Ministerial Conference, held in Singapore, agreed to begin work of an analytical nature on the "Relationship between trade and investment". The World Trade Organization Working Group on the Relationship between Trade and Investment, established to undertake this work, examines the links between trade and investment (with regard to FDI and foreign portfolio investment) from several angles, including (a) the implications of the relationship between trade and investment for development and economic growth; (b) the economic relationship between trade and investment; (c) stocktaking and analysis of existing international instruments and activities regarding trade and investment; and (d) the advantages and disadvantages for World Trade Organization members of bilateral, regional and multilateral rules on investment.

23. At the 1999 World Trade Organization Ministerial Conference in Seattle, several World Trade Organization members from developed countries, supported by some developing countries, proposed that a new multilateral framework of rules be negotiated in the World Trade Organization on foreign investment, to complement BITs and regional investment arrangements where these already existed. No consensus on these proposals was reached in Seattle.

24. Discussions among members on this subject continue in the World Trade Organization (including in the Working Group). While the Working Group has concentrated on continuing its examinations of the economic and development impact of FDI, in the context of discussions in the World Trade Organization General Council to prepare for the fourth World Trade Organization Ministerial Conference, a number of members have proposed that negotiations be launched on multilateral investment rules in the World Trade Organization. Other members have opposed this proposal. Other proposals that were made concern a plurilateral approach to the issue of investment in the World Trade Organization, and a continuation of the study process before entering into discussions of elements for the possible inclusion of investment on the World Trade Organization agenda could be considered. As of the writing of the present technical note, no consensus had been reached.

25. In the light of the multitude and variety of proposals and instruments under discussion and negotiation, the Secretary-General proposed in his report to the Preparatory Committee for the High-Level International Intergovernmental Event on Financing for Development at its second substantive session (A/AC.257/12) that "Member States should consider the convening of ad hoc global hearings to discuss the issues surrounding international investment agreements, in particular the extent to which such agreements can further the development of developing countries" (see boxed boldface text between paras. 51 and 52).

III. Bibliography

26. While there is a considerable literature on existing investment instruments, the literature on proposals for such instruments is limited. UNCTAD regularly reports on developments in this area in its annual *World Investment Reports*. A number of key issues are also addressed in UNCTAD's Series on Issues on International Investment Agreements (which has covered so far: illicit payments; home country operational measures; host country operational measures; social responsibility; environment; transfer of funds; employment; taxation; international investment agreements: flexibility for development; taking of property; trends in international investment agreements: an overview; lessons from the Multilateral Agreement on Investment (MAI); national treatment; fair and equitable treatment; investment-related measures; most-favoured-nation treatment; admission and establishment; scope and definition; transfer pricing; and foreign direct investment and development). The executive summaries of these studies are available on the Internet (at http://www.unctad.org/iia).

27. Useful background information can also be found in:

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Notes

[1] For a complete collection of existing instruments in this area see UNCTAD (1996, 2000a and forthcoming).

[2] For a survey of the existing network of BITs, see UNCTAD (2000b).

[3] For an in-depth comparative analysis of BIT clauses, see UNCTAD (1998).

[4] See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994* (GATT secretariat publication, Sales No. GATT/1994-7).

[5] General Assembly resolution 217 A (III).

[6] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution, annex I.

[7] For examples, see UNCTAD (1996, 2000a, forthcoming).

[8] This initiative involves the following 34 countries: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and Grenadines, Suriname, Trinidad and Tobago, Uruguay, the United States of America and Venezuela.

[9] UNCTAD (2000a).

[10] Paragraph 24 of the report on "Debt relief and beyond", transmitted by the Group of Seven Finance Ministers to the Group of Eight Heads of State and Government at the Group of Eight Summit held in Genoa in July 2001.

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Note by the Secretary-General

Addendum

Technical note No. 8: Existing proposals on financial crisis prevention, including operation of early warning systems and transparent and predictable international financial markets*

I. Introduction

1. Financial crises pose very serious problems for economies everywhere, but they are especially damaging for developing and transition economies. Not only can financial crises slow growth, but they can also lead to declines in output and investment, increase poverty and unemployment, and undermine the credibility of national and international institutions. Thus, policies to enhance financing for development should include ways to help reduce the number and severity of such crises.

2. The 1997-1999 crisis, which began in Asia but spread to many parts of the world, led to numerous calls for creating a "new international financial architecture". While such a large-scale overhaul did not occur, a number of important changes have taken place. Some of the most significant innovations relating to crisis prevention include: (a) an increase in the information available about countries' economic and financial situation, especially through the International Monetary Fund (IMF) Special Data Dissemination Standard, which is in the process of being strengthened through guidelines on debt and reserves; (b) an increase in information on the international financial institutions' own programmes and activities; (c) agreement to implement 11 "standards and codes" on

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monetary and financial policy transparency, fiscal transparency, banking supervision, securities, insurance, payments systems, corporate governance, accounting, auditing, and insolvency and creditors' rights; (d) proposals — whose implementation has been postponed — for a revision of the Basel Capital Accord; (e) greater recognition by the international financial institutions (IFIs) that financial and capital-account liberalization needs to be a gradual process, accompanied by adequate regulation and supervision; (f) greater recognition by all actors that the private sector must be incorporated into efforts towards crisis prevention; and (g) increased funding for the IFIs and new credit facilities, including the Contingent Credit Line (CCL) which was designed specifically to combat contagion, although it has yet to be used.

II. Proposals

3. Despite these developments, many challenges remain with respect to preventing financial crises. The proposals that are listed below involve a number of levels for action: financial and economic management for both developed and developing countries, international surveillance and regulation, regional innovations to complement measures at the international level, the role of the private sector, and early warning and data issues. They are arranged roughly according to these categories, although there is often overlap within a given proposal.

4. Given the plethora of new ideas that have emerged since the Asian crisis, and the changes that have occurred, the present note focuses on proposals presented in more recent years. In the list that follows, the origin of the proposal and the intergovernmental body to which the proposal has been presented have been identified except in the case of ministerial communiqués (for example, the Intergovernmental Group of Twenty-four (G-24) ministerial communiqués are regularly presented to the IMF International Monetary and Financial Committee and the joint IMF/World Bank Development Committee and the results of the United Nations conferences are regularly presented to the General Assembly).

Financial and economic management

1. *Origin*: Meeting of Group of Seven (G-7) Finance Ministers, Rome, Italy, July 2001

   Proposal: "Opening access to capital markets is a complex process that cannot be addressed by a standardized, one-size-fits-all approach. The goal of the international community should be to help countries adopt the appropriate policies towards gaining sustained access to global capital markets, while the final responsibility for adopting those policies rests with the individual countries" (report of G-7 Finance Ministers and Central Bank Governors, 7 July 2001, para. 26).

2. *Origin*: United Nations Conference on Trade and Development (UNCTAD) *Trade and Development Report*, 2001

   Presented to: UNCTAD Trade and Development Board

   Summary of the proposal: The report proposes that "controls on capital inflows should be a permanent feature of policy, to be used flexibly and in the light of circumstances. The techniques available to control inflows are well known and have been discussed at length in past issues of *Trade and Development Report*" (United Nations publication, Sales No. E.01.II.D.10).

3. *Origin*: Report of the Regional Consultative Meeting on Financing for Development in the European Region, Geneva, December 2000 (A/AC.257/15)

   Presented to: Preparatory Committee

   Proposal: "The general view was that exchange-rate regimes cannot be discussed independently of the underlying capital-account regime. Any recommendations for exchange-rate regimes have to take into account the economic conditions in each individual country. Given that these differ, the appropriate regime will also differ across countries. Between the extremes of freely floating exchange rates on the one hand and strictly fixed exchange rates on the other, there exists a range of intermediate

solutions which may fit the specific circumstances of individual countries" (paras. 57 and 58).

4. *Origin*: Report of the Regional Consultative Meeting on Financing for Development in the European Region, Geneva, December 2000 (A/AC.257/15)

Presented to: Preparatory Committee

Proposal: "The strengthening and restructuring of the financial sector will not be possible without a coherent national regulatory framework. Regulatory reform is therefore a necessary condition for reducing the probability of financial crises and, when they occur, limiting their adverse effects" (para. 53).

5. *Origin*: Economic Commission for Latin America and the Caribbean (ECLAC) secretariat, "Growth with stability: financing for development in the new international context" (LC/G.2117 (CONF.89/3))

Presented to: Governments of Latin America and the Caribbean at the Regional Consultation on Financing for Development, Bogota, Colombia, November 2000 (A/AC.257/17)

Proposal: "The first element of any crisis prevention policy is consistent and flexible macroeconomic management of booms. This management should be oriented towards preventing public and private agents from accumulating large debts, and towards avoiding imbalances in the most important prices, especially the exchange rate and prices of national assets (financial assets and real estate) ... The authorities must strive to establish a structural balance — and even a surplus — in public finances in order to help strengthen the economy's capacity to save and to give themselves more room to manoeuvre in managing the business cycle ... Monetary and exchange-rate policies should be geared towards preventing short-term booms from leading to excessively rapid increases in external and internal credit to the private sector and unsustainable surges in real exchange rates. These measures will be more effective if they are accompanied by prudential regulations on capital inflows, the prudential regulation and supervision of financial systems, and an explicit 'liability policy' aimed at improving the time profile of public and private debt" (see sect. II).

6. *Origin*: Financial Stability Forum (FSF), Working Group on Capital Flows

Presented to: Member Governments of FSF, April 2000

Proposal: "The need for the development of domestic bond markets has been highlighted by recent financial crises. The risky debt structure of the sovereign and corporate sectors, characterized by heavy concentration in short-term and foreign currency debts as a result of the lack of developed domestic bond markets, has often been blamed as the cause of many crises. In the absence of developed domestic financial markets, even countries without a net external financing requirement can incur external or foreign currency mismatches ... The Government can, in normal times, benefit by having a full array of instruments that it can use for funding, so that it will not have to rely on money creation or foreign currency borrowing. Moreover, debt financing needs rise rapidly in the aftermath of financial crises, as corporate and bank restructuring entails huge costs ... In the case of corporations, equity markets have a great role to play as a provider of risk-absorbing long-term capital to finance the firm. Financing through equity issuance will in some cases allow for a better match between the assets and liabilities of the firm than the match available through bond financing. Clearly, well-functioning equity markets are important for the management of risks" (report of the Working Group, 5 April 2000, paras. 120-122).

7. *Origin*: Financial Stability Forum, Working Group on Capital Flows

Presented to: Member Governments of FSF, April 2000

Proposal: "Many developed and emerging countries have benefited from capital mobility. However, large-scale inflows may have adverse effects on an economy if, by putting unwelcome upward pressure on the exchange rate, they complicate the conduct of domestic monetary policy. Large-scale inflows of short-term claims are also a source of potential vulnerability, as new inflows may cease or existing claims may not be rolled over ... The use of controls on capital inflows may be justified for a transitional period in the face of very strong inflows or as countries strengthen the institutional and regulatory environment in their domestic financial systems ... But it is vital that controls should not be seen as providing a way of allowing countries to pursue unsound macroeconomic policies or to delay activities to strengthen the financial system" (ibid., paras. 110 and 115).

8. *Origin*: Towards a new international financial architecture: report of the Task Force of the Executive Committee on Economic and Social Affairs of the United Nations, United Nations 1999

Proposal: "The crisis has made evident the need to enhance the coherence of macroeconomic policies in industrialized countries, in order to avoid both inflationary and deflationary biases at the global level. The design of international institutions and policies must include, in the first place, clear incentives for national authorities in the industrialized world to maintain their economies at close to full employment while at the same time avoiding inflation. This will have favourable effects not only for these economies, but also for the world at large" (see sect. 4, first paragraph).

International surveillance, standards and codes

9. *Origin*: Managing Director, IMF

Presented to: International Monetary and Financial Committee, April 2001

Proposal: "IMF needs to work even harder to put crisis prevention at the heart of its activities. In particular, we have to find ways to sharpen our analysis, reach concrete conclusions, and use these more effectively in the Fund's policy advice, as well as in underpinning members' political will and ability to take early and pre-emptive action. In this context, the risks for the global financial system from possible imbalances in advanced economies need to be addressed with the same vigour as those posed by developments in emerging market economies."

10. *Origin*: Intergovernmental Group of Twenty-four on Monetary Affairs (G-24), ministerial communiqué, Washington, D.C., 23 September 2000 and April 2001

Proposal: "Ministers recognize the positive aspects of the development of international codes, standards, and best practices in the spheres of data dissemination, fiscal transparency and transparency in monetary and financial policies, and the management of debt as well as reserves. However, they note that the participation of developing countries in discussions on the development of these standards and codes has been limited, and they call for a more inclusive process. Ministers continue to underline the voluntary nature of implementing such codes and standards, taking into account the particular institutional capacities and stage of development of each country. They also stress the importance of the availability of appropriate technical assistance where needed. Ministers find the application of codes and standards to be highly asymmetric. Standards in the area of transparency are being pressed upon developing countries without a commensurate application of corresponding obligations for disclosure by financial institutions, including currently unregulated highly leveraged institutions. Ministers would insist that any monitoring of standards and codes within the corresponding competencies of the Bretton Woods institutions should be done on a

strictly symmetric basis. Moreover, compliance with such standards and codes should not be prematurely integrated into the Article IV consultation process and must not become a conditions for use of IMF resources" (ministerial communiqué of 23 September 2000, para. 14).

11. *Origin*: Report of the Secretary-General to the Preparatory Committee for the High-level International Intergovernmental Event on Financing for Development at its second substantive session (A/AC.257/12), United Nations, 18 December 2000

Presented to: Preparatory Committee

Proposal: "The high-level event should underline the importance of full and symmetric surveillance of all national and regional economies by IMF on behalf of the international community. Such surveillance should continue to emphasize the systemic consequences of national economic developments and policies, taking into account the differences in circumstances among countries. The content and nature of multilateral surveillance should continue to be kept under review, adapted and strengthened as the world economic and financial environment evolves" (boxed boldface text between paras. 154 and 155).

12. *Origin*: Governments at the Regional Consultative Meeting on Financing for Development in the Asia and Pacific Region, August 2000, Jakarta, Indonesia (A/AC.257/13)

Presented to: Preparatory Committee

Proposal: "It was suggested that IMF surveillance over the macroeconomic and financial policies of major industrialized countries must be strengthened, particularly with a view to their impact on international capital flows, exchange rates and the debt burden of developing countries" (para. 45).

13. *Origin*: Report of the Regional Consultation on Financing for Development in the Western Asia Region, Beirut, November 2000 (A/AC.257/16)

Presented to: Preparatory Committee

Proposal: "In view of the growing size and integration of financial markets, the prevention of a crisis is a concern for many countries and not only for the one immediately affected. Global surveillance of national policies is therefore called for ... A major factor in the failure of IMF surveillance procedures so far has been their unbalanced nature that gives too little recognition to the disproportionately large global impact of monetary policies of major industrialized countries. In fact, financial crises in emerging countries are often connected to major shifts in monetary and exchange-rate policies of industrialized countries. Even though these shifts affect their development policies, developing countries lack mechanisms under the existing system to redress their negative impact" (para. 63).

14. *Origin*: Report of the Regional Consultative Meeting on Financing for Development in the African Region, and Preparatory Meeting for the Third United Nations Conference on the Least Developed Countries, Addis Ababa, Ethiopia, November 2000 (A/AC.257/14)

Presented to: Preparatory Committee

Proposal: "While the proposed measures to reform the international architecture were acknowledged, such as early provision of information, the need to strengthen accountability and transparency, and the need to improve regulation and supervision, it was noted that reform should be undertaken with a view to developing a level playing field in the implementation of a rule-based system in the management of international capital flows. African countries should have a greater say in the functioning of a more transparent international financial system. The main priority for African countries is to ensure that the new international financial system facilitates efficient capital flows from developed countries to Africa" (para. 34).

15. *Origin*: Report of the Regional Consultation on Financing for Development in the Western Asia Region, Beirut, November 2000 (A/AC.257/16)

Presented to: Preparatory Committee

Proposal: "The current practice in financial regulation and supervision is for the Bank for International Settlements (BIS) to formulate standards expected to be applied by national authorities, rather than to establish a global regulatory agency. There are, however, three sets of problems with this procedure. First, BIS standards do not properly account for risks in international lending. Second, BIS standards are designed to protect the international banking system, not the debtor developing countries. Third, there are potential problems for developing countries in this approach, which applies indiscriminately to all countries irrespective of their levels of development and different institutions. It was advocated that the adoption of such standards should be voluntary and that it should recognize variations among countries. Moreover, the adherence to such standards should not become part of the IMF conditionality" (para. 60).

16. *Origin*: UNCTAD *Trade and Development Report, 1999*

Presented to: UNCTAD Trade and Development Board

Summary of the proposal: The Report suggests that a remedy for the asymmetries in existing surveillance practices might be to use "a mechanism analogous to that used for settling disputes in international trade, where disagreements over the impact of macroeconomic and financial policies could be taken up and their resolution sought" (United Nations publication, Sales No. E.99.II.D.1).

Regional role in crisis prevention

17. *Origin*: Report of the Secretary-General to the Preparatory Committee for the High-level International Intergovernmental Event on Financing for Development at its second substantive session, December 2000 (A/AC.257/12)

Presented to: Preparatory Committee

Proposal: "The high-level event should endorse the principle that arrangements among groups of countries for mutual surveillance are a useful supplement to multilateral surveillance, and should encourage developing and transition economy countries to engage in such exercises. The international financial institutions and such other entities should work closely together to mutually reinforce their respective surveillance and policy coordination endeavours" (boxed boldface text between paras. 155 and 156).

18. *Origin*: Asia and the Pacific Region Governments at the Regional Consultative Meeting on Financing for Development, August 2000, Jakarta, Indonesia (A/AC.257/13)

Presented to: Preparatory Committee

Proposal: "Strong support was expressed for increasing regional cooperation in monetary and financial matters as a means of promoting development and improving prevention and management of financial crises. Measures to increase cooperation were viewed as being complementary to the process of reforming international financial architecture. The discussions on reform so far have tended to ignore the importance of developing a regional financial architecture. It was generally felt that the Asia and Pacific region had great potential for increasing regional cooperation.

- "• Implementation of regional cooperation should be a phased process, beginning with those measures that are easiest to implement.

- "• The use of the inter-bank swap arrangements agreed in Chiang Mai, Thailand (at a meeting of Finance Ministers of the Association of

South-East Asian Nations (ASEAN) Countries, China, Japan and the Republic of Korea held on 6 May 2000), should allow for the participation of countries at different levels of openness and development in regional arrangements. They provide the potential for deeper cooperation in this area.

"• Another area for regional cooperation involves establishing a level and regulatory framework for international banks operating in the region" (paras. 49-50).

19. *Origin*: Towards a new international financial architecture: report of the Task Force of the Executive Committee on Economic and Social Affairs of the United Nations, January 1999

Proposal: "Most proposals for the reform of the international financial architecture involve strengthening a few international institutions. It can be argued that stronger regional and subregional institutions can play a significant role, in terms of both the stability of the world financial system and the balance-of-power relations at the international level. The experience of Western Europe, from the Payments Union in the early post-war years to the European Union (EU) and the euro today, suggests that regional financial organizations and arrangements can play an essential stabilizing role. More limited experiences at a regional level, including regional and subregional development banks and a few reserve funds, indicate that they can also play an important role in a new international financial architecture ... Strong regional reserve funds would at least partially deter would-be speculators from attacking the currencies of individual countries and thus, among other dire effects, from threatening regional trade and financial relations. They could also supplement the IMF funds in times of difficulty ... The design of the new architecture could thus introduce special incentives to develop such institutions. For instance, common reserve funds could be given special automatic access to IMF financing and/or a share in the allocation of special drawing rights (SDRs)" (sect. 9, first and second paragraphs).

20. *Origin*: Asian Finance and Central Bank Deputies, member Governments of the Manila Framework, 18 and 19 November 1997 (Agreed summary of discussions)

Proposal: "Deputies agreed on the need and desirability of a framework for regional cooperation to enhance the prospects for financial stability. This framework, which recognizes the central role of IMF in the international monetary system, includes the following initiatives: (a) a mechanism for regional surveillance to complement global surveillance by IMF; (b) enhanced economic and technical cooperation, particularly in strengthening domestic financial systems and regulatory capacities; (c) measures to strengthen IMF's capacity to respond to financial crises; and (d) a cooperative financing arrangement that would supplement IMF resources" (para. 3).

Private sector role in crisis prevention[1]

21. *Origin*: Communiqué of the International Monetary and Financial Committee

Presented to: IMF, Washington, D.C., 16 April 2000

Proposal: "The Committee underscores the importance of prevention as the first line of defence against crises. Countries participating in international capital markets and their private creditors should seek, in normal times, to establish a strong, continuous dialogue. Collective action clauses could have an important role to play in facilitating orderly crisis resolution" (para. 12).

22. *Origin*: Commonwealth Finance Ministers, Grand Cayman, Cayman Islands, 21-23 September 1999 (communiqué)

Proposal: "Ministers emphasized the importance of ensuring stability in the global financial system through increased

transparency and disclosure by financial institutions, particularly relating to the activities associated with heavily leveraged institutions (HLIs); and continuing to consider closer oversight of institutions lending to HLIs. They stressed the importance of action to alter banking regulations that encouraged excessive short-term lending to countries" (para. 17).

23. *Origin*: G-24, ministerial communiqué, 25 September 1999, Washington, D.C.

Proposal: "Ministers recognize that the role of private capital flows will continue to expand in an increasingly integrated global economy. Therefore, it is difficult to visualize the prevention or resolution of financial crises without direct and timely private sector involvement. In this regard, the major challenge for the international community is to develop a market-friendly strategy for involving the private sector in a manner that does not disrupt or unduly raise the cost of capital flows to developing countries. Ministers suggest that any strategy should minimize spillover effects on other borrowers. They encourage further progress towards voluntary arrangements for private sector participation before crises arise, such as through contingent credit lines, embedded call options, and debt-service insurance. Other provisions are also needed to cover both crises prevention as well as resolution, including bankruptcy procedures, the establishment of creditor-debtor councils, and in extreme cases the possibility of a standstill of debt repayments. In addition, Ministers stress the importance of symmetric disclosure of relevant information as between the private and public sectors" (para. 4).

Early warning systems and other data issues

24. *Origin*: Managing Director, International Monetary Fund, International Monetary and Financial Committee, April 2001

Proposal: "Highest on our agenda for the coming months should be further work on early warning systems. There is a need to combine quantitative indicators of vulnerability with judgement from the field and from the markets."

25. *Origin*: ECLAC secretariat, "Growth with stability: financing for development in the new international context"

Presented to: Governments at the Regional Consultation on Financing for Development in the Latin American and Caribbean Region, Bogotá, Colombia, November 2000 (see A/AC.257/17 for summary)

Proposal: "Rating agencies are among the main private institutions responsible for providing information to investors. Their performance during the financial crisis was unsatisfactory ... Rather than mitigate financial cycles (which is what a good information system should do), they have tended to exacerbate them. For this reason, the Governments of developed countries, perhaps with the support of multilateral financial institutions, must spur private institutions to rate sovereign risk using strict and objective parameters that are known to the public."

26. *Origin*: Financial Stability Forum (FSF), Working Group on Capital Flows (report (5 April 2000))

Presented to: Member Governments of FSF

Proposal: "Serious efforts have been made by the international community to enhance aggregate data on external debt and capital flows, which are key ingredients for the assessment of vulnerabilities. These efforts must be supported, and the importance of their success highlighted, if they are to maintain the needed momentum. However, while significant progress has been made, there remain gaps in the availability of data necessary for comprehensive risk analysis, as well as apparent inconsistencies in data from different sources ... Important gaps remain in national external debt statistics, especially regarding the assessment of

liquidity risk: data by residual maturity rather than original maturity; by face value as well as market value; with a distinction by currency as well as residency; information on embedded put options in bond contracts; and amortization schedules (including interest payments)" (paras. 138 and 151).

27. *Origin*: International Organization of Securities Commissions (IOSCO)/Emerging Markets Committee (EMC), "Causes, Effects and Regulatory Implications of Financial and Economic Turbulence in Emerging Markets", Montreal, Canada, November 1999

Presented to: Member Governments

Proposal: "Economists, analysts, and credit rating agencies play an important role in highlighting potential fault lines in the corporate and financial sectors. That credit rating agencies could have done a better job at predicting the crisis, for example, points to the need for more effective early warning systems ... Among the areas that may merit regular and comprehensive examination are institutional control mechanisms and risk management systems, asset concentration and exposures, disclosure requirements, activities requiring specific approval, and accounting and regulatory standards compliance."

Notes

[1] See also technical note by the Secretary-General entitled "Existing proposals for improved or new processes for coordinated debt restructuring (prevention and treatment of debt problems) in order to sustain growth and support economic and social development" (A/AC.257/27/Add.5), sect. entitled "Proposals for engagement of debtor countries with their creditors".

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